Office - Supreme Court, U. S.
FILED
JUL 24 1940
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

October Term, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND,

Respondent.

BRIEF IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI

GILES J. PATTERSON,
T. M. SHACKLEFORD, Jr.
Counsel for Respondent.

TABLE OF CASES

Page

Broughton v. City of Pensacola,
93 U. S. 266, 23 L. ed 896 7
Board of Public Instruction for Dade Co. v. State,
121 Fla. 702, 164 So. 697 6
City of Lampasas v. Talcott,
94 F. 457 7
City of Sour Lake v. Branch,
6 F. (2d) 355 7
City of South Houston v. Carman
6 F. (2d) 358 7
City of Uvalde v. Spier
91 F. 594 7
Erie Railway Co. v. Tompkins
302 U. S. 671, 82 L. ed. 518 3
Forsyth v. City of Hammond,
166 U. S. 506, 41 L. ed 1095 3
Klemm v. Winter Haven
192 So. 652 4
Magnum Import Co. v. Coty
262 U. S. 159, 67 L. ed. 922 3
Middleton v. City of St. Augustine
42 Fla. 287, 29 So. 421 6
Port of Mobile v. Watson
116 U. S. 289, 28 L. ed. 620 7
Shapleigh v. San Angelo,
167 U. S. 644, 42 L. ed. 310 7
State v. City of Cedar Key,
122 Fla. 454, 165 So. 672 3
State v. Pompano
113 Fla. 246, 151 So. 485 4
136 Fla. 730, 188 So. 610 4
State ex rel. Havana State Bank v. Rhodes
115 Fla. 259, 151 So. 289 5
Winter Haven v. Klemm, et al.
132 Fla. 334, 181 So. 153 4
192 So. 646 4

In the Supreme Court of the United States

October Term, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND,

Respondent.

BRIEF IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI

Petition Fails to State a Case Under the Rules to Justify Issuance of a Writ of Certiorari.

The Petition for Certiorari filed in this case (p. 3, Subdivision II) gives four "Reasons Relied On For Allowance of the Writ". These are:

1. Application for the writ is timely made. This is admitted, but is not a "Reason".

2. The decision of the Circuit Court of Appeals "is in conflict with applicable decisions of the Supreme Court of Florida, construing the Constitution of Florida". This statement is not supported by references to what petitioner considers "applicable decisions".

3. "*The effect* of the decision and judgment is to hold this petitioner liable for the debt of another, and will deprive petitioner of its property without just compensation". Note that this statement refers only to "the effect of the decision and judgment", and is a charge that the decision of the Circuit Court of Appeals violates the Florida and Federal Constitutions. The petition does not show how, nor what, property it is deprived of.

4. That "the foregoing questions, as points of law" were raised and presented in the lower courts. This statement is misleading if it is intended to mean that the pleadings in the lower court, or in the Circuit Court of Appeals, made claim to constitutional rights guaranteed by the Constitution of Florida or of the United States.

The brief supporting the petition does not elaborate or discuss these "Reasons", but (p. 6) states three "Errors" of law which it supports by "Argument". The errors assigned are:

1. That the lower court erred in holding that the City of Largo ever existed, either de jure or de facto.

2. That the lower court erred in holding that the bonds sued on were valid, because no election was held.

3. That the lower court erred in holding that the defendant Town of Largo is the legal successor of the City of Largo.

This summary statement of the "Reasons" and "Specification of Errors" contained in the petition and brief indicates that petitioner evidently assumes that this proceeding is an appeal from what it conceives to be an erroneous decision by the Circuit Court of Appeals. The brief is patently an argument of the merits of the case. It does not even attempt to show why petitioner is entitled, under the rules of this Court, to have its *petition* granted. Petitioner

has misconceived the object of a petition for Writ of Certiorari to this Court and the rule of this Court that governs the granting of the same. Writs of Certiorari from this Court are not granted to review decisions of the lower court "merely to settle matters of private interest", *Forsyth v. City of Hammond*, 166 U. S. 506, 41 L. ed. 1095, nor to give the party defeated in the court below another appeal, *Magnum Import Co. v. Coty*, 262 U. S. 159, 67 L. ed 922.

Rule 38 of this Court provides that it "will be granted only where there are special and important reasons therefor". None of the situations described in that rule as illustrations of the "character of reasons" which control the granting of petitions by this Court exists in this case, and neither the petition nor the brief contains any statement that can be construed as a "special and important reason" unless it be the unsupported statement in the second "Reason" in the petition "that the decision of the Circuit Court of Appeals is contrary to the decisions of the Supreme Court of Florida construing the constitution of that state".

Even if it be admitted that since the decision of this Court in *Erie Railway Company v. Tompkins*, 302 U. S. 671, 82 L. ed. 518, a decision by a Circuit Court of Appeals contrary to the decisions of the Supreme Court of the state in which the case arose is a "special and important reason" which would justify granting of a petition, it is necessary that the petition or the brief should make an affirmative showing that there is a conflict. The petition does not point out what decisions of the Florida court conflict with the decision of the Circuit Court of Appeals. The decisions of the Florida court referred to in the "Argument" (p. 6 et seq.) in the brief, are the very same decisions of the Florida court which are cited and relied upon by the Circuit Court of Appeals as authority for its decision. The Court will also note that both petition and brief omit even a reference to the decision of the Florida Supreme Court in *State v. City of Cedar Key*, 122 Fla. 454, 165 So. 672, which is specifically cited by the Court of Appeals. A casual perusal of

that opinion will show that the Florida Supreme Court there affirmed the issuance of a writ of mandamus against the City of Cedar Key, despite the fact that the Florida court had previously entered a judgment of ouster against the corporation on the ground that its charter was void for the same reasons which it gave to sustain a similar decision that the charter of the City of Largo was void. The *Cedar Key* case has never been reversed or modified. Neither the petition nor the brief seeks to distinguish that case from the present, or contends that it is not controlling here. In so far as the "Argument" in the brief of petitioner may be considered applicable to the second "Reason" (p. 3) it may be summarized as merely the unsupported opinion of counsel in contrast with the opinion and decision of the Circuit Court of Appeals expressly stating that it is based solely upon the authority of the decisions of the Florida Supreme Court. It is also noticeable that the brief refers to decisions of the Florida Supreme Court in *Winter Haven v. Klemm, et al*, 132 Fla. 334, 181 So. 153 (p. 7) and *State v. Pompano*, 113 Fla. 246, 151 So. 485, but makes no reference to the later decisions of the Florida Supreme Court in *Winter Haven v. Klemm* and *Klemm v. Winter Haven*, 192 So. 646 and 652 respectively, and *State v. Pompano*, 136 Fla. 730, 188 So. 610, which are contrary to petitioners claim. These later cases are cited in the footnote to the opinion of the Circuit Court of Appeals.

Though it may not be necessary to discuss the "Errors" assigned in the brief (p. 6) unless a writ should be issued, they are so lacking in merit that we briefly state our position with reference thereto.

1. That the City of Largo did exist de facto, if not also de jure, is sustained by the decisions of the Supreme Court of Florida in *State v. Cedar Key*, supra, and *Winter Haven v. Klemm*, supra.

2. That the bonds were valid obligations is demonstrated in a threefold manner.

First: Because, as the Stipulation (pp. 32-33) shows, two of the three issues of bonds involved in the suit were validated before they were issued, by a decree of the Circuit Court dated April 29, 1926.

Second: Because all three issues of bonds were validated by two special acts of the legislature of Florida. Bonds dated May 15, 1925 were validated by Chapter 11588, Acts of 1923, and all three issues were validated by Chapter 12995, Acts of 1927. That act even declared that "all acts of the City Commission and other officers of said City with reference to the authorization, issuance, sale and delivery of said bonds, the payment of all expenses connected therewith, and all other acts and proceedings had or taken in reference thereto, be and the same are hereby ratified, validated and confirmed and said bonds are hereby declared to be general, direct, valid and binding obligations of said City of Largo". This legislative declaration was added to the judicial declaration of the validation decree.

Third: The bonds recite on their face that they were issued, not solely under the charter act, as brief of petitioner states, but, as they themselves recite, "pursuant to and in strict compliance with the Constitution *and the Statutes of the State of Florida and among others*" the charter act of the Town. If there was any valid statute of the State of Florida under which the bonds could be issued, this recital is conclusive.

The only ground upon which the validity of the bonds is attacked is because no election of freeholders was held in accordance with the provisions of the charter of the City. The Supreme Court of Florida in *State ex rel. Havana State Bank v. Rhodes*, 115 Fla. 259, 151 So. 289, held on the authority of earlier decisions of this Court that "behind a recital of acts and proceedings importing validity of negotiable county or municipal bonds, a bona fide holder for value is not bound to look, except for legislative authority",

and "so it is that the corporate existence of the issuing authority cannot be attacked if at the time of the issuance of the securities it had a de facto existence and acted as an authorized legal entity, whether it actually was or not". In *Board of Public Instruction for Dade County v. State*, 121 Fla. 702, 164 So. 697, it held that, since the principal purpose of a validation decree is to put in repose questions of fact which exist dehors the face of the bonds, the decree of validation "put in perpetual repose" the question of whether or not an election had been held and had resulted favorable to the issue of the bonds.

Since the Constitution did not require approval of the issue by an election as a condition precedent, it was within the power of the legislature to ratify and validate the bonds, even though no election was held, *Middleton v. City of St. Augustine*, 42 Fla. 287, 29 So. 421.

Chapter 6458, Acts of 1913, Sections 3016-17 and 3020-21 C. G. L. 1927, and Chapter 9298, Acts of 1923, Sections 3022-3042 C. G. L. 1927, both authorize all cities and towns in Florida to issue "Improvement Bonds" against assessments, without holding an election of freeholders. Both acts state that they are supplemental and additional methods for financing the cost of such improvements and that they are available to any city regardless of the provisions of any city charter. Both of these acts authorize the issuance of "Improvement Bonds", to secure the payment of which special assessments levied on abutting properties are pledged, without requiring approval of the issue at an election. Prima facie, all of these bonds were issued under the authority of one of these two statutes.

3. The third "Assignment of Error" is an unsupported argument that the Town is not successor to the City "in fact and in law". But the Stipulation (p. 31 et seq.) *admits facts* that prove that the Town is and has been functioning as successor to the City, and that it claims to be exercising jurisdiction de jure, as well as de facto, over a part of the

area which was formerly within the City. The decision of the Circuit Court of Appeals that the Town is successor to the City follows other decisions by that court in *City of Uvalde v. Spier*, 91 F. 594, *City of Lampasas v. Talcott*, 94 F. 457, *City of Sour Lake v. Branch*, 6 F. (2d) 355, and *City of South Houston v. Carman*, 6 F. (2d) 358, all of which were predicated upon the decisions of this Court in *Broughton v. City of Pensacola*, 93 U. S. 266, 23 L. ed 896, *Port of Mobile v. Watson*, 116 U. S. 289, 28 L. ed. 620 and *Shapleigh v. San Angelo*, 167 U. S. 644, 42 L. ed. 310. The last cited case is closely parallel in fact, because in that case the charter of the city had been held void in an action in quo warranto for the same reasons assigned by the Florida court for holding void the charter of the City of Largo, and the new town included a portion of the area of the one declared void.

Neither the petition nor the brief attempts to distinguish these cases from the case in hand. Petitioner's argument rests solely upon its assumption that the charter of the City having been held void, no one is now liable, a position contrary to both law and equity.

Respectfully submitted,

GILES J. PATTERSON
T. M. SHACKLEFORD, Jr.
Counsel for Respondent.